

Referee Robert M. O'Brien

PARTIES Railroad Yardmasters of America
TO
DISPUTE: Seaboard Coast Line Railroad Company

STATEMENT OF CLAIM: Claim and request of Railroad Yardmasters of America that:

Yardmaster J. F. Smith, Jr., be allowed one day's pay at the appropriate yardmaster time and one-half rate for March 9, 1972 account being called off regular assignment and unable to work his own assignment.

OPINION OF BOARD: Yardmaster Smith, regularly assigned to work yardmaster position 3:00 PM to 11:00 PM was required, on the claim date, to work yardmaster assignment 9:00 AM to 6:00 PM, thereby preventing him from filling his regular assignment. He claims one day's pay at the punitive rate account being called off his regular assignment and unable to work his own assignment. Petitioner cites Article 2(c) to support its position since claimant was prevented from working his bulletined position.

Carrier has denied the claim alleging Petitioner violated Article 10(b) by failing to give Carrier officer who initially received and disallowed the claim proper notice of rejection, and further, contending there is no Rule support for the claim in any event.

It is apparent that Petitioner failed to give Mr. Moody, the initial Carrier officer who handled the claim, written notice of the rejection of his decision denying the claim as required by Article 10(b). However, when the claim was appealed to Mr. Duffer, the Terminal Superintendent, and he failed to raise this objection, it is our opinion that Carrier waived its right to raise this procedural objection based on violation of Article 10(b).

It is not disputed that claimant was prevented from working his regular 3:00 PM assignment when Carrier required him to protect the 9:00 AM yardmaster assignment. We agree with Petitioner that this constituted a violation of Article 2(c). Carrier cannot with impunity ignore a yardmaster's regular time for reporting for duty and require him to cover another assignment thereby precluding him from working his regularly bulletined position. If an employe is committed to protect the hours of his regularly assigned position and is not available to fill a temporary short-term vacancy when doing so would prevent him from completing his own assignment, as Referee Weston concluded in Award 2859, then the converse is equally true, and Carrier cannot prevent him from working his own assignment by requiring him to cover another assignment. To hold otherwise would render the starting times established under the bulletin meaningless.

Nor do we believe an emergency existed on the claim date justifying Carrier's actions herein. Finding a contractual violation existent herein we deem the claim to be meritorious and we will allow it as presented.

FINDINGS:

The Fourth Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier and the employe involved in this dispute are respectively carrier and employe within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

The parties to said dispute were given due notice of hearing thereon.

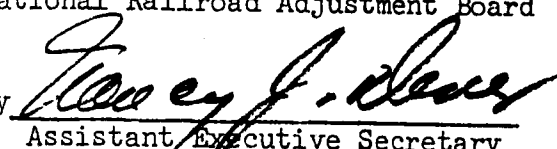
The parties to said dispute waived right of appearance at hearing thereon.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Fourth Division

ATTEST: Executive Secretary
National Railroad Adjustment Board

By 
Assistant Executive Secretary

Dated at Chicago, Illinois, this 13th day of September, 1973.